IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 91 OF 2006

Shri Rajesh Tukaram Javalkar ..Appellant

Vs.

Sou. Deepali Rajesh Javalkar ..Respondent

Mr. R.G. Ketkar for appellant.
Mr. S.R. Page for respondent.

**CORAM: B.H. MARLAPALLE, J.**

**Date : April 30, 2007.**

**P.C.:**

1. Heard the learned counsel for the parties who are personally present before the court. They were married on 19th March, 1998 and subsequently the marital discord resulted in the appellant-husband filing Hindu Marriage Petition No. 109 of 2000 in the Court of the learned 4th Joint Civil Judge, Senior Division, Pune on the ground of cruelty to him and his parents by the wife and the wife had deserted him without sufficient reasons. After hearing both the parties the Marriage Petition was allowed in the following terms :-

"(i) The marriage dated 19.3.1998 solemnised between the Petitioner and Respondent is hereby dissolved from this 21st day of August, 2001. Accordingly decree for divorce be prepared in favour of the Petitioner.

(ii) The Petitioner will have to pay monthly maintenance Rs.1000/- (Rupees One Thousand only) to the Respondent from the date of this order."

2. Being aggrieved by the said decree of divorce, the wife filed Civil Appeal No. 803 of 2001 and the learned District Judge, Pune was pleased to allow the appeal and set aside the Judgment and Decree dated 21/8/2001 passed by the learned 4th Joint Civil Judge, S.D., at Pune. The judgment and order of the Lower Appellate Court is dated 3/9/2005 and the ground of cruelty did not find favour with the Lower Appellate Court.

3. When this appeal came up for hearing from time to time, it was stated by the parties that they wanted to settle the marital discord and the husband who

searched for a house and stayed separately so that the wife could join him. However, inspite of the efforts made by both the parties, it appears that the marriage had reached an irretrievable stage and, therefore, the husband and wife prudently decided to annul the marriage by consent. Time was granted to finalise the consent terms for such dissolution of marriage and accordingly with the assistance of their learned Advocates the parties have been successful in arriving at an amicable settlement. The settlement terms have been reduced in writing as minutes of order and placed before me. They have been signed by both the parties and they appeared before the competent officer for verification. The Minutes of Order is taken on record and marked "X" for identification.

4. The learned counsel, therefore, pray that the second appeal be allowed by granting a decree of divorce by consent. Section 13B of the Hindu Marriage Act, 1955 that a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together on the ground that they have been living separately for a period of one year or more or that

they have not been able to live together and that they have mutually agreed that the marriage should be dissolved. Section 23 of the said Act states that in any proceeding under the said Act, whether defended or not, the court concerned has the power to grant a decree. Section 23 (1)(bb) of the Hindu Marriage Act, 1955 empowers the Appellate Court to grant a decree of divorce on the ground of mutual consent provided the court is satisfied that such consent has not been obtained by force, fraud or undue influence.

5. The appellant-husband has agreed to pay an amount of Rs.1,50,000/- to the respondent-wife as full and final settlement of all her claims against him. In turn, the wife has declared that she has no right, title, interest in any of the moveable or immovable properties of the husband and that she has no claim of whatsoever nature, financial/monetary or otherwise against the appellant in future. They have specifically stated that these terms are not executed under any pressure, duress or undue influence.

6. Hence the appeal is allowed in terms of the minutes of order and a decree of divorce by consent is

directed to be issued under Section 13B read with Section 23 of the Hindu Marriage Act, 1955.

**(B.H. Marlapalle,J.)**